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ACCRETION.

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ALIEN IMMIGRANT.

The act of February 26, 1885, "to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," 23 Stat. 332, c. 164, does not apply to a contract between an alien, residing out of the United States, and a religious society incorporated under the laws of a State, whereby he engages to remove to the United States and to enter into the service of the society as its rector or minister. *Holy Trinity Church* v. *United States*, 457.

APPEAL.

See BEHRING SEA.

APPURTENANCE.

An appurtenance is that which belongs to or is connected with something else to which it is subordinate or less worthy, and with which it passes as an incident; and in strict legal sense land can never be appurtenant to land. *New Orleans Pacific Railway Co.* v. *Parker*, 42.

See RAILROAD, 1, 3.

AVULSION.

See RIPARIAN OWNER.

BEHRING SEA.

At a time when a diplomatic correspondence was going on between the United States and Great Britain respecting the extent of the jurisdiction of the former in the waters of Behring Sea, a libel in admiralty was filed in the District Court of Alaska, alleging a seizure by the

United States authorities of a vessel "within the limits of Alaska Territory, and in the waters thereof and within the civil and judicial District of Alaska, to wit: within the waters of that portion of Behring Sea belonging to the United States and said district, on waters navigable from the sea by vessels of ten or more tons burden," and charging that "the said vessel and her captain, officers and crew were then and there found engaged in killing fur seals within the limits of Alaska Territory and in the said waters thereof, in violation," etc. The findings of fact followed this description, and described the act complained of as done "within the waters of Alaska." No request was made to have the findings made more specific as to the place where the offence was committed. The vessel being condemned, the claimants appealed to this court. The appeal was duly entered and docketed, and was then dismissed on application of the appellant, who applied for leave to file an application for a writ of prohibition to restrain the court below from enforcing the sentence or the decree of condemnation. Leave being granted, the petition was filed, and it is now *Held*,

(1) That the legal inference from the findings of fact is, that the act took place within the jurisdiction of the United States;

(2) That an appeal lay to this court from the decree of the District Court;

(3) That, the District Court having found the facts, this court would be limited, on appeal, to the consideration of the questions of law presented by the record;

(4) That the District Court on the pleadings and facts found had jurisdiction of the case, and the petitioner might have prosecuted an appeal; and that the appeal taken was insufficient for petitioner's purposes, because of his neglect to have included in the findings the exact locality of the seizure;

(5) That for this reason the writ of prohibition should not issue: the court resting its denial of it on this ground, although it might have placed it upon the well settled principle that an application to a court to review the action of the political department of the government, upon a question pending between it and a foreign power, and to determine whether the government was right or wrong, made while diplomatic negotiations are still going on, should be denied. *In re Cooper*, 472.

BILL OF REVIEW.

See EXECUTOR AND ADMINISTRATOR, 1.

BOUNDARY.

See CONSTITUTIONAL LAW, A, 13;
EQUITY, 3;
JURISDICTION, B, 7.

CAPTURED AND ABANDONED PROPERTY.
See REBELLION, 3.

CASES AFFIRMED.

1. As the bill of exceptions does not purport to contain all the evidence, and as no request was made for a finding of fact as to the actual fact of the killing of the seals and the seizure of the vessel, the rulings in *Ex parte Cooper*, 143 U. S. 472, are decisive of this case, and it is followed. *The Sylvia Handy*, 513.
2. The case of *Munn* v. *Illinois*, 94 U. S. 113, reviewed and adhered to, and its application in cases decided in the state courts considered. *Budd* v. *New York*, 517.
3. *Hammond* v. *Hopkins*, 143 U. S. 224, cited and followed. *Hoyt* v. *Latham*, 553.

See DISTRICT OF COLUMBIA, 2;
MAILS, TRANSPORTATION OF;
STATUTE, B, 1.

CASES DISTINGUISHED OR EXPLAINED.

1. *Ex parte Dubuque & Pacific Railroad*, 1 Wall. 69, distinguished from this case. *Smale* v. *Mitchell*, 99.
2. The decision in *Chicago &c. Railway Co.* v. *Minnesota*, 134 U. S. 418 explained. *Budd* v. *New York*, 517.
3. *United States* v. *Langston*, 118 U. S. 389, distinguished from this case. *Dunwoody* v. *United States*, 578.

CHARGE TO THE JURY.

When the trial court has, in its general charge, given the substance of instructions requested, there is no error in refusing to give them in the language requested. *Erie Railroad Co.* v. *Winter*, 60.

CIRCUIT COURTS OF APPEALS.
See JURISDICTION, B, 3.

CITIZEN.
See NATURALIZATION.

COMMON CARRIER.

1. Passengers on railroad trains are not presumed or required to know the rules and regulations of the company, made for the guidance of its conductors and employés, as to its own internal affairs. *Erie Railroad Co.* v. *Winter*, 60.
2. Plaintiff bought a ticket in Boston entitling him to a passage over defendant's road. At the time he informed the ticket agent of his wish

to stop off at the Olean station, and was then told by the agent that he would have to speak to the conductor about that. Between Binghamton and Olean the plaintiff informed the conductor that he wished to stop over at Olean and the conductor, instead of giving him a stop-over ticket, punched his ticket and told him that was sufficient to give him the right to stop over at Olean, and afterwards to use the punched ticket between Olean and Salamanca. He made the stop, and taking another train to Salamanca, presented the punched ticket, informing the conductor of what had taken place. The conductor refused to take it and demanded full fare. The payment of this being refused the conductor stopped the train at the next station and ejected him from it, using such force as was necessary. *Held*, (1) That he was rightfully on the train at the time of his expulsion; (2) That the conductor had no right to put him off for not paying his fare; (3) That the company was liable for the act of the conductor; (4) That the passenger had a right to refuse to be ejected from the train, and to make a sufficient resistance to being put off to denote that he was being removed against his will by compulsion; (5) That the fact that under such circumstances he was put off the train was, of itself, a good cause of action against the company, irrespective of any physical injury he might have then received, or which was caused thereby. *Erie Railroad Co.* v. *Winter*, 60.

See EVIDENCE, 3.

CONFLICT OF LAWS.

See EXECUTOR AND ADMINISTRATOR, 2.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. Section 3894 of Revised Statutes, as amended by the act of September 19, 1890, 26 Stat. 465, c. 908, which provides that "no letter, postal card or circular concerning any lottery . . . and no list of the drawings at any lottery . . . and no lottery ticket or part thereof . . . shall be carried in the mail, or delivered at or through any post-office, or branch thereof, or by any letter-carrier"; and that no newspaper "containing any advertisement of any lottery" "shall be carried in the mail, or delivered by any postmaster or letter-carrier"; and that "any person who shall knowingly deposit or cause to be deposited . . . anything to be conveyed or delivered by mail in violation of this section . . . shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year," is a constitutional exercise of the power conferred upon Congress by Article I, sec. 8 of the Constitution, to establish post-offices and post-roads, and does not abridge "the freedom of speech or of the

press," within the meaning of Amendment I to the Constitution. *In re Rapier*, 110.

2. An ordinance of a city, imposing, pursuant to a Statute of the State, a license tax, for the business of running any horse or steam railroad for the transportation of passengers, does not impair the obligation of a contract, made before the passage of the statute, by which the city sold to a railroad company for a large price the right of way and franchise for twenty-five years to run a railroad over certain streets and according to certain regulations, and the company agreed to pay to the city annually a real estate tax, and the city bound itself not to grant, during the same period, a right of way to any other railroad company over the same streets. *New Orleans City & Lake Railroad Co.* v. *New Orleans*, 192.
3. Sec. 3894, Rev. Stat. as amended by the act of September 19, 1890, 26 Stat. 465, c. 908, is constitutional, under the decision in *Ex parte Rapier*, 143 U. S. 110. *Horner* v. *United States*, No. 1, 207.
4. The statute of New York of May 26, 1881, (Laws of 1881, c. 361,) imposing a tax upon the corporate franchise or business of every corporation, joint-stock company or association incorporated or organized under any law of the State or of any other State or county, to be computed by a percentage upon its whole capital stock, and to be ascertained in the manner provided by the act, when applied to a manufacturing corporation organized under the laws of Utah, and doing the greater part of its business out of the State of New York, and paying taxes in Illinois and Utah, but doing a small part of its business in the State of New York, does not tax persons or property not within the State; nor regulate interstate commerce; nor take private property without just compensation; nor deny to the corporation the equal protection of the laws; nor impose a tax beyond the constitutional power of the State: and the remedy of the corporation against hardship and injustice, if any has been suffered, must be sought in the legislature of the State. *Horn Silver Mining Co.* v. *New York*, 305.
5. The cases respecting state taxation of foreign corporations reviewed. *Ib.*
6. The act of the legislature of Michigan of June 28, 1889, (Public Laws of 1889, pp. 282, 283,) fixing the amount per mile to be charged by railways for the transportation of a passenger, violates no provision in the Constitution of the United States, so far as disclosed by the record in this case. *Chicago & Grand Trunk Railway Co.* v. *Wellman*, 339.
7. A legislature has power to fix rates for the transportation of passengers by railways, and the extent of judicial interference is protection against unreasonable rates. *Ib.*
8. Courts should be careful not to declare legislative acts unconstitutional upon agreed and general statements, and without the fullest disclosure of all material facts. *Ib.*
9. Whenever, in the pursuance of an honest antagonistic assertion of rights there is presented a question involving the validity of any act of any

legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must determine whether the act be constitutional or not; but it never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act. *Ib.*

10. An act of the legislature of New York (Laws of 1888, chap. 581) provided that the maximum charge for elevating, receiving, weighing and discharging grain should not exceed five-eighths of one cent a bushel; and that, in the process of handling grain by means of floating and stationary elevators, the lake vessels or propellers, the ocean vessels or steamships, and canal boats, should only be required to pay the actual cost of trimming or shovelling to the leg of the elevator when unloading, and trimming cargo when loading; *Held*, that the act was a legitimate exercise of the police power of the State over a business affected with a public interest, and did not violate the Constitution of the United States, and was valid. *Budd* v. *New York*, 517.
11. Although the act of New York did not apply to places having less than 130,000 population, it did not deprive persons owning elevators in places of 130,000 population or more, of the equal protection of the laws. *Ib.*
12. Although it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without his consent, that principle has no application to a suit by one government against another government. *United States* v. *Texas*, 621.
13. The exercise by this court of original jurisdiction in a suit brought by one State against another to determine the boundary line between them, or in a suit brought by the United States against a State to determine the boundary between a Territory of the United States and that State, so far from infringing, in either case, upon the sovereignty, is with the consent of the State sued. *Ib.*
14. The signing by the Speaker of the House of Representatives and by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two Houses of such bill as one that has passed Congress; and when the bill thus attested receives the approval of the President, and is deposited in the Department of State according to law, its authentication as a bill that has passed Congress is complete and unimpeachable. *Field* v. *Clark*, 649.
15. It is not competent to show from the journals of either House of Congress, that an act so authenticated, approved and deposited, did not pass in the precise form in which it was signed by the presiding officers of the two Houses and approved by the President. *Ib.*
16. Congress cannot, under the Constitution, delegate its legislative power to the President. *Ib.*
17. The authority conferred upon the President by section 3 of the act of October 1, 1890, to reduce the revenue and equalize duties on imports,

and for other purposes, 26 Stat. c. 1244, pp. 567, 612, to suspend by proclamation the free introduction of sugar, molasses, coffee, tea and hides, when he is satisfied that any country producing such articles imposes duties or other exactions upon the agricultural or other prod ucts of the United States, which he may deem to be reciprocally unequal or unreasonable, is not open to the objection that it unconstitutionally transfers legislative power to the President, (FULLER, C. J., and LAMAR, J., dissenting;) but even if it were it does not follow that other parts of the act imposing duties upon imported articles, are inoperative. *Ib.*

18. The court does not decide whether the provision in that act respecting bounties upon sugar (schedule E, Sugar, 26 Stat. 583) is or is not constitutional, because it is plain from the act that these bounties do not constitute a part of the system of customs duties imposed by the act, and it is clear that the parts of the act imposing such duties would remain in force even if these bounties were held to be unconstitutionally imposed. *Ib.*

See CRIMINAL LAW, 3, 4, 7;
JURISDICTION, B, 6;
TAX AND TAXATION, 2.

CONTRACT.

In the interpretation of any particular clause of a contract, the court is not only at liberty, but required, to examine the entire contract, and may also consider the relations of the parties, their connection with the subject matter of the contract, and the circumstances under which it was made. *Chicago, Rock Island &c. Railway* v. *Denver & Rio Grande Railroad*, 596.

See NATIONAL BOARD OF HEALTH; REBELLION, 1, 2;
RAILROAD, 3; TAX AND TAXATION, 2, 3.

CORPORATION.

See LOCAL LAW.

COSTS.

See JURISDICTION, C, 1.

COURT AND JURY.

See CHARGE TO THE JURY;
MINERAL LAND, 1 (3).

CRIMINAL LAW.

1. Under § 3894 of the Revised Statutes, as amended by the act of September 19, 1890, c. 908, (26 Stat. 465,) in regard to the carriage of lottery matter in the mail, it is an offence to cause a lottery circular,

mailed at the city of New York, and addressed there to a person in Illinois, to be delivered to such person in Illinois, by mail, and an indictment for so doing is triable in Illinois. *Horner* v. *United States*, No. 1, 207.

2. At common law it was deemed essential in capital cases that inquiry be made of the defendant before judgment was passed whether he had anything to say why sentence of death should not be pronounced upon him; thus giving him an opportunity to allege any ground of arrest, or to plead a pardon if he had obtained one, or to urge any legal objection to further proceedings against him. And if the record did not show that such privilege was accorded to him the judgment would be reversed. *Schwab* v. *Berggren*, 442.
3. This rule, however, does not apply to an appellate court, which, upon review of the proceedings in the trial court, merely affirms a final judgment, without rendering a new one. Due process of law does not require his presence in the latter court at the time the judgment sentencing him to death is affirmed. *Ib.*
4. Neither the statutes of Illinois nor due process of law, require that the accused, upon the affirmance of the judgment sentencing him to death, shall be sentenced anew by the trial court. The judgment is not vacated by the writ of error; only its execution is stayed pending proceedings in the appellate court. *Ib.*
5. The time and place of executing the sentence of death is not strictly part of the judgment unless made so by statute. *Ib.*
6. The governor of Illinois has power under the constitution of that State, to commute the punishment of death to imprisonment for life in the penitentiary. *Ib.*
7. F. was convicted of murder, in the Criminal Court of Cook County, Illinois, and sentenced by that court to suffer the penalty of death. Upon writ of error to the Supreme Court of Illinois, that judgment was affirmed and the day fixed in the original judgment for carrying the sentence into execution having passed, that court fixed another day. After the expiration of the term the accused applied for a correction of the record of the Supreme Court, so as to show that he was not present in that court when the original judgment was affirmed, and another day fixed for the execution. The application was denied upon the ground, in part, that amendments of the record of the court in derogation of the final judgment could not be allowed at a subsequent term. *Held*, (1) That the law of Illinois, as declared by its highest court, in respect to amendments of the record, was applicable to all persons within the jurisdiction of that State, and its enforcement against the plaintiff in error was not a denial to him by the State of the equal protection of the laws; (2) That due process of law did not require the presence of the accused in the appellate court when the original judgment of the trial court was affirmed, and a new day fixed for his execution. *Fielder* v. *Illinois*, 452.

CUSTOMS DUTIES.

See CONSTITUTIONAL LAW, A, 17, 18; STATUTE, B, 4.

DILIGENCE.

See LACHES.

DISCOVERY.

See EQUITY, 1.

DISTRICT OF COLUMBIA.

1. Section 354 of Rev. Stat. Dist. Columb., providing that "no person shall be appointed to office, or hold office in the police force [of the District of Columbia] who cannot read and write the English language, or who is not a citizen of the United States, or who shall ever have been indicted and convicted of crime; and no person shall be appointed as policeman or watchman who has not served in the army or navy of the United States and received an honorable discharge" was repealed by the act of June 11, 1878, "providing a permanent form of government for the District of Columbia." 20 Stat. 102, c. 180. *District of Columbia* v. *Hutton*, 18.
2. *Eckloff* v. *District of Columbia*, 135 U. S. 240, affirmed as to the point that the act of June 11, 1878, 20 Stat. 102, c. 180, supplied to the District of Columbia for the first time a permanent form of government in the nature of a constitution. *Ib.*

EJECTMENT.

See JURISDICTION, C, 2.

EQUITY.

1. A decree in a suit in equity found that T., an individual defendant, and the remaining assets of a corporation defendant, were liable to the plaintiff for the sum of $10,000 paid by him into the treasury of the company, at the instance of T., for a certificate of stock therein, which company was represented to him by T., who was its president, to be in a flourishing condition, when, in fact, it was insolvent; and distributed $176.24 as the remaining assets of the company, of which $13.24 went to the plaintiff as a credit on his claim for $10,000; and decreed that T. pay to the plaintiff $10,000, subject to a credit of the $13.24. There was no demurrer to the bill for multifariousness, and no objection taken in the court below for want of equity. The bill set out fraud in T., and that the $10,000 was due to the plaintiff by T. and the company, and required answers to interrogatories, which answers referred to the books of the company for information: *Held*, (1) To support jurisdiction in equity, there were in the case discovery, account, fraud, misrepresentation and concealment; the objection to the jurisdiction was not taken in the court below; and the case was not

one of a plain defect of equity jurisdiction, under § 723 of the Revised Statutes; (2) The decree was not outside of the case made by the bill, but gave relief agreeable to it, under the prayer for general relief; (3) The evidence sustained the decree, and the report of a master, finding in favor of the plaintiff the facts on which the decree was based, was not excepted to by T. *Tyler* v. *Savage*, 79.

2. A court of equity will not aid a party whose application is destitute of conscience, good faith and reasonable diligence, but will discourage stale demands, for the peace of society, by refusing to interfere where there has been gross laches in prosecuting rights, or where long acquiescence in the assertion of adverse rights has occurred; and in these respects each case must be governed by its own circumstances. *Hammond* v. *Hopkins*, 224.
3. A suit in equity being appropriate for determining the boundary between two States, the fact that the present suit is in equity, and not at law, is no valid objection to it. *United States* v. *Texas*, 621.

See EVIDENCE, 4; LACHES; RAILROAD, 2, 3; TRUST, 1, 2.

EVIDENCE.

1. On the trial of an action to recover from a carrier freights improperly collected from the consignees on shipments by plaintiff, the plaintiff, who was his own witness, was asked several questions with the apparent design of showing that he had had other transactions with the defendant, upon which he was indebted to defendant, and that there was a judgment pending against him in favor of defendant. *Held*, that these questions were not admissible. *National Steamship Co.* v. *Tugman*, 28.
2. It being shown that a paper was served as a copy of an affidavit on behalf of the defendant, with an order to show cause in the action on trial, it is thereby sufficiently authenticated to enable it to be read in evidence against him, and it is competent evidence on behalf of the plaintiff as an admission by the defendant that the facts stated in the affidavit are true. *Ib.*
3. Parol evidence of what is said between a passenger on a railroad and the ticket-seller of the company, at the time of the purchase by the passenger of his ticket, is admissible as going to make up the contract of carriage and forming part of it. *Erie Railroad Co.* v. *Winter*, 60.
4. In order to justify a court in refusing to enforce a settlement of a quarrel between the members of a large family, growing out of disputes about the wills of their father and other members of the family, and out of money transactions between brothers and sisters, upon the ground that the settlement was obtained by misrepresentation, active or covert, or that it failed to express the real intent of the parties, the

testimony should establish the fact clearly and satisfactorily; and in this case it is not so established. *Chandler* v. *Pomeroy*, 318.

See CONSTITUTIONAL LAW, A, 15;
MINERAL LAND.

EXCEPTION.

After the term at which a trial took place has expired, without the court's control over the case being reserved by standing rule or special order, and especially after a writ of error has been entered in this court, the court below cannot allow a bill of exceptions then first presented, or amend a bill of exceptions already allowed and filed. *Michigan Insurance Bank* v. *Eldred*, 293.

EXECUTOR AND ADMINISTRATOR.

1. An administrator, appointed in one State, who, after appearing and having judgment rendered against him as such in a suit in equity brought in another State, the laws of which authorize a foreign administrator to sue there, files a bill of review in the same court to reverse the decree, for the reason that, not being an administrator appointed by the courts of that State, he could not be sued there, is bound by the original judgment against him, if his bill of review is dismissed for want of equity. *Lawrence* v. *Nelson*, 215.
2. The general equity jurisdiction of the Circuit Court of the United States to administer, as between citizens of different States, the assets of a deceased person within its jurisdiction cannot be defeated or impaired by laws of a State undertaking to give exclusive jurisdiction to its own courts. *Ib.*

FICTITIOUS SUIT.

See CONSTITUTIONAL LAW, A, 9.

FRAUD.

See EQUITY, 1; LACHES;
EVIDENCE, 4; TRUST.

HABEAS CORPUS.

Where a person is committed in one district, by a United States commissioner, for trial in another, the question of his identity cannot be reviewed on *habeas corpus*. *Horner* v. *United States*, No. 1, 207.

INTERNAL REVENUE.

The stealing of distilled spirits from a distillery warehouse by reason of the omission of the internal revenue officers to provide sufficient locks on the doors affords no defence to an action on the distiller's bond to pay the tax due on the spirits before their removal and within three years from the date of entry. *United States* v. *Witten*, 76.

IOWA.

See RIPARIAN OWNER.

JURISDICTION.

A. OF COURTS OF THE UNITED STATES, GENERALLY.

An application to a court to review the action of the political department of the government, upon a question pending between it and a foreign power, and to determine whether the government was right or wrong, made while diplomatic negotiations are still going on, should be denied. *In re Cooper*, 472.

B. OF THE SUPREME COURT OF THE UNITED STATES.

1. When several plaintiffs claim under the same title, and the determination of the cause necessarily involves the validity of that title, and the whole amount involved exceeds $5000, this court has jurisdiction as to all such plaintiffs, though the individual claims of none of them exceed $5000: but where the matters in dispute are separate and distinct, and are joined in one suit for convenience or economy, the rule is the reverse as to claims not exceeding $5000. *New Orleans Pacific Railway Co.* v. *Parker*, 42.
2. It is not the province of this court to determine whether a verdict was excessive. *Erie Railroad Co.* v. *Winter*, 60.
3. The questions (1) whether it is settled law in the State of Minnesota that a judgment of dismissal in a former suit, such as is pleaded in this case, was not a bar to a second suit on the same cause of action; (2) whether the law in respect of recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of a case, do not fall within the category of question of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in reference to them. *In re Woods, Petitioner*, 202.
4. The highest court of a State decided that a judgment of another court of the State, granting a petition to revive a judgment under a statute of limitations of the State authorizing this to be done upon citation "to the defendant or his representative," in order to prevent the running of the statute could not, at the suit of one claiming under the original defendant, be collaterally impeached because the only person cited was the assignee in bankruptcy of that defendant. *Held*, that the decision was not subject to review by this court on writ of error. *Ludeling* v. *Chaffe*, 301.
5. In this case, which was a writ of error to the Supreme Court of a State, it was contended that that court did not give to a judgment of a Circuit Court of the United States such faith and credit as it was entitled to under the Constitution and laws of the United States; and that it

disregarded the provision of the Constitution of the United States that no State shall pass any law impairing the obligation of a contract. *Held*, that the first contention was incorrect; that the question as to the impairment of the obligation of a contract was raised for the first time in this court, and was not accurate in fact; and that the writ of error must be dismissed. *Winona & St Peter Railroad Co.* v. *Plainview*, 371.

6. On a complaint before a United States commissioner in New York, against H. for a criminal offence, in violation of § 3894 of the Revised Statutes, as amended by the act of September 19, 1890, c. 908, (26 Stat. 465,) prohibiting the sending by mail of circulars concerning lotteries, H. was committed to await the action of the grand jury. A writ of *habeas corpus* issued by the Circuit Court of the United States was dismissed by that court. H. appealed to this court in November, 1891. *Held*, (1) As the constitutionality of § 3894, as amended, was drawn in question, an appeal lay directly to this court from the Circuit Court, under § 5 of the act of March 3, 1891, c. 517, (26 Stat. 826 to 828, 1115;) (2) Under such an appeal, this court acquires jurisdiction of the entire case, and of all questions involved in it, and not merely of the question of constitutionality; (3) This court ought not to review the question whether the transaction complained of was an offence against the statute, because the commissioner had jurisdiction of the subject matter involved, and of the person of H.; (4) The statute is constitutional; (5) A statute is a law equally with a treaty, and, if subsequent to and conflicting with the treaty, supersedes the latter. *Horner* v. *United States*, No. 2, 570.

The Supreme Court of the United States has original jurisdiction of a suit in equity brought by the United States against a State to determine the boundary between that State and a Territory of the United States, and that question is susceptible of judicial determination. *United States* v. *Texas*, 621.

See BEHRING SEA;
NATURALIZATION.

C. OF CIRCUIT COURTS OF THE UNITED STATES.

1. In a case reversed in this court and remanded to a state court upon the ground that that court had lost its jurisdiction by petition and bond for removal, the propriety of staying proceedings in the Circuit Court after removal, until costs adjudged in the state court are paid, is purely a matter of discretion in the Circuit Court. *National Steamship Co.* v. *Tugman*, 28.

2. The provision in the statute of Illinois, (Rev. Stats. c. 45, § 35,) that "at any time within one year after a judgment, either upon default or verdict in the action of ejectment, the party against whom it is rendered, his heirs or assigns, upon the payment of all costs recovered therein, shall be entitled to have the judgment vacated, and a new

trial granted in the cause" applies to such a judgment rendered in a Circuit Court of the United States, sitting within that State, on a mandate from this court in a case commenced in a court of the State of Illinois, and removed thence to the Circuit Court of the United States. *Smale* v. *Mitchell*, 99.

See EXCEPTION; EXECUTOR AND ADMINISTRATOR, 2.

D. OF DISTRICT COURTS.

1. The District Court for the District of Alaska has jurisdiction in admiralty to forfeit vessels for violating the provisions of Rev. Stat. § 1956 on any of the navigable waters of the United States which were acquired by the treaty with Russia, concluded March 30, 1857, 15 Stat. 539. *In re Cooper*, 472.
2. United States District Courts, sitting in admiralty, are courts of superior jurisdiction, and every intendment is made in favor of their decrees; and when it appears that the court had jurisdiction of the subject matter and either that the defendant was duly served with process or that he voluntarily appeared and made defence, the decree is not open collaterally to any inquiry upon the merits or jurisdiction dependent on those facts. *Ib.*
3. The latter part of section 7 of the act of May 17, 1884, 23 Stat. 24, 26, may be read as follows: "And the final judgments and decrees of said District Court of Alaska may be reviewed by the Supreme Court of the United States as in other cases;" and, being so read, its meaning is that this court may review the final judgments or decrees of that court, as in cases of the same kind from other courts. *Ib.*
4. The act of February 16, 1875, 18 Stat. 315, c. 77, § 1, applies to appeals taken from decrees of the District Court of the United States for the District of Alaska, sitting in admiralty. *Ib.*

See BEHRING SEA.

LACHES.

In all cases where actual fraud is not made out, but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence. *Hammond* v. *Hopkins*, 224.

See EQUITY, 2;
TRUST, 1, 2, 3.

LOCAL LAW.

Under the Code of Wisconsin, an express denial, upon information and belief, that the plaintiff was, at or since the commencement of the action, or is now, a corporation, puts in issue the existence of the corporation. *Michigan Insurance Bank* v. *Eldred*, 293.

District of Columbia. *See* DISTRICT OF COLUMBIA.
Illinois. *See* CRIMINAL LAW, A, 4, 6, 7; JURISDICTION, C, 2; MORTGAGE.
Kentucky. *See* SALE; TAX AND TAXATION.
Michigan. *See* CONSTITUTIONAL LAW, A, 6.
Minnesota. *See* JURISDICTION, B, 3.
New York. *See* CONSTITUTIONAL LAW, 4, 10, 11.

LOTTERY.

See CONSTITUTIONAL LAW, A, 1; CRIMINAL LAW, 1; JURISDICTION, B, 6; MAILS, TRANSPORTATION OF.

MAILS, TRANSPORTATION OF.

Ex parte Jackson, 96 U. S. 727, affirmed to the points; (1) That the power vested in Congress to establish post-offices and post-roads embraces the regulation of the entire postal system of the country, and that under it Congress may designate what may be carried in the mail and what excluded; (2) That in excluding various articles from the mails the object of Congress is, not to interfere with the freedom of the press, or with any other rights of the people, but to refuse the facilities for the distribution of matter deemed injurious by Congress to the public morals; (3) That the transportation in any other way of matter excluded from the mails is not forbidden. *In re Rapier*, 110.

See CONSTITUTIONAL LAW, A, 1.

MISREPRESENTATION.

See EQUITY, 1; EVIDENCE, 4.

MISSOURI RIVER.

See RIPARIAN OWNER, 2.

MINERAL LAND.

In ejectment for the possession of a mine. The plaintiff claimed under a placer patent, issued January 30, 1880, on an application made November 13, 1878, and entry and payment made February 21, 1879. The defendant claimed under a location certificate of a lode issued to one Goodale, dated March 10, and recorded March 11, 1879, reciting a location February 1, 1879. The defendant, to maintain its claim, offered the testimony of several witnesses, which this court holds to establish that in 1877, and more than a year before any proceedings were initiated with reference to the placer patent, the grantors of defendant entered upon and ran a tunnel some 400 feet in length into and through that ground which afterwards was patented as the placer

tract; and that in running such tunnel they intersected and crossed three veins, one of which was thereafter, and in 1879, located as the Goodell vein or lode. The vein thus crossed and disclosed by the tunnel was from seventy-five to seventy-eight feet from its mouth, of about fifteen inches in width, with distinct walls of porphyry on either side, a vein whose existence was obvious to even a casual inspection by any one passing through the tunnel. At the trial the court ruled that if the vein was known to the placer patentee at or before entry and payment, although not known at the time of the application for the patent, it was excepted from the property conveyed by the patent. *Held*,

(1) That this vein was a known vein at the time of the application for the placer patent;

(2) That the plaintiff was bound to know of the existence of the tunnel, and what an examination of it would disclose;

(3) That it was a question for the jury whether there was sufficient gold or silver within the vein to justify exploitation, and to be properly a "known vein or lode" within the meaning of Rev. Stat. § 2333;

(4) That the time at which the vein or lode within the placer must be known in order to be excepted from the grant of the placer patent is the time at which the application for that patent was made; but that the plaintiff suffered no injury from the error in the instruction of the court below in that respect, as the facts which implied knowledge at the time of the entry and payment existed also at and before the date of the application;

(5) That the neglect of the parties who ran the tunnel to at once develop the vein was of no account, as it appeared that there was a prevalent belief that a rich blanket vein was underlying the entire country, and this was the object of pursuit by all;

(6) That the admission of evidence respecting that blanket vein was immaterial, as the attention of the jury was directed by the court to the vein disclosed by the tunnel as the known vein, upon which the rights of defendant rested. *Iron Silver Mining Co.* v. *Mike & Starr Gold and Silver Mining Co.*, 394.

2. A placer patent conveys to the patentee full title to all lodes or veins within the territorial limits not then known to exist; and mere speculation and belief, based, not on any discoveries in the placer tract, or any tracings of a vein or lode adjacent thereto, but on the fact that quite a number of shafts, sunk elsewhere in the district, had disclosed horizontal deposits of a particular kind of ore, which, it was argued, might be merely a part of a single vein of continuous extension through all that territory, is not the knowledge required by the law. *Sullivan* v. *Iron Silver Mining Co.*, 431.

MISREPRESENTATION.

See EQUITY, 1;
EVIDENCE, 4.

MORTGAGE.

Under the law of Illinois, a grantee who by the terms of an absolute conveyance from the mortgagor assumes the payment of the mortgage debt, is liable to an action at law by the mortgagee; the relation of the grantee and the grantor towards the mortgagee is that of principal and surety; and therefore a subsequent agreement of the mortgagee with the grantee, without the assent of the grantor, extending the time of payment of the mortgage debt, discharges the grantor from all personal liability for that debt. *Union Mut. Life Ins. Co.* v. *Hanford*, 187.

See RAILROAD, 1, 2.

NATIONAL BANK.

The conversion of a state bank into a national bank, with a change of name, under the National Banking Act, does not affect its identity, or its right to sue upon liabilities incurred to it by its former name. *Michigan Insurance Bank* v. *Eldred*, 293.

NATIONAL BOARD OF HEALTH.

The National Board of Health had no authority to incur any liability upon the part of the government for salaries or other expenses in excess of the amounts appropriated by Congress for such purposes; and the plaintiff in error did not perform services as a member of that board, or as its chief clerk, or its secretary, or as a disbursing agent of the Treasury Department under any implied contract that he should be compensated otherwise than out of the moneys specifically appropriated to meet the expenses incurred by the board in the performance of the duties imposed upon it. *Dunwoody* v. *United States*, 578.

NATURALIZATION.

Boyd was born in Ireland in 1834, of Irish parents. His father emigrated to the United States in 1844, with all his family, and settled in Ohio, in which State he has since resided continuously. In 1849 the father duly declared his intention to become a citizen of the United States, but there is no record or other written evidence that he ever completed his naturalization by taking out his naturalization certificate after the expiration of the five years. For many years after the expiration of that time, however, he exercised rights and claimed privileges in Ohio, which could only be claimed and exercised by citizens of the United States and of the State. The son, on attaining majority, voted in Ohio, under the belief that his father had become a citizen. In 1856 he removed to Nebraska, in which State he resided continuously until the commencement of this action. He voted there at all elections, held various offices there which required him to take an oath to support the Constitution of the United States, served in the army during the war, was a member of a convention to frame a state constitution, was mayor of Omaha and, after thirty years of unquestioned exercise of such

rights and privileges, was elected governor of the State of Nebraska, receiving a greater number of votes than any other person voted for. He took the oath of office, and entered on the discharge of its duties. His predecessor, as relator, filed an information in the Supreme Court of Nebraska, in which were set forth the facts as to the declaration of intention by Boyd's father, and it was further averred that the father did not become a citizen during the son's minority, nor until the October term of the Court of Common Pleas in Muskingum County, Ohio, in the year 1890, when the son was 56 years of age, and it was claimed that Boyd, the son, never having himself been naturalized, was not, at the time of his election, a citizen of the United States, and was not, under the constitution and laws of Nebraska, eligible to the office of governor of that State, and the relator therefore prayed judgment that Boyd be ousted from that office, and that the relator be declared entitled to it until a successor could be elected. To this information the respondent, in his answer, after stating that his father, on March 5, 1849, when the respondent was about 14 years of age, made before a court of the State of Ohio his declaration of intention to become a citizen of the United States, and averring "that his father, for 42 years last past has enjoyed and exercised all of the rights, immunities and privileges and discharged all the duties of a citizen of the United States and of the State of Ohio, and was in all respects and to all intents and purposes a citizen of the United States and of the State of Ohio," and particularly alleging his qualifications to be a citizen, and his acting as such for forty years, voting and holding office in that State, further distinctly alleged "on information and belief, that prior to October, 1854, his father did in fact complete his naturalization in strict accordance with the acts of Congress known as the naturalization laws, so as to admit and constitute him a full citizen thereunder, he having exercised the rights of citizenship herein described, and at said time informed respondent that such was the fact. To this answer the relator interposed a demurrer, and on these pleadings the court below entered a judgment of ouster against Boyd, to which judgment a writ of error was sued out from this court. *Held*,

(1) That as the defence relied on arose under an act of Congress, and presented a question of Federal law, this court had jurisdiction to review it;

(2) That the fact that the respondent's father became a citizen of the United States was well pleaded, and was admitted by the demurrer;

(3) That upon this record Boyd had been for two years, next preceding his election to the office of governor, a citizen of the United States and of the State of Nebraska;

(4) That where no record of naturalization can be produced, evidence that a person having the requisite qualifications to become a citizen did in fact and for a long time vote, and hold office, and exercise rights belonging to citizens, is sufficient to warrant a jury in inferring that he has been duly naturalized as a citizen.

And it was further, *Held*, by FULLER, C. J., and BLATCHFORD, LAMAR, and BREWER, JJ.:

(5) That, the Supreme Court having denied to Boyd a right or privilege existing under the Constitution of the United States, this court had jurisdiction, on that ground also, to review the judgment of the Supreme Court of Nebraska;

(6) That, even if the father did not complete his naturalization before the son attained majority, the son did not lose the inchoate status which he had acquired through his father's declaration of intention to become a citizen, and that he occupied in Nebraska the same position which his father would have occupied had he emigrated to that State;

(7) That within the intent and meaning of the acts of Congress he was made a citizen of the United States and of the State of Nebraska under the organic and enabling acts of Congress, and the act admitting that State into the Union;

(8) That Congress has the power to effect a collective naturalization on the admission of a State into the Union, and did so in the case of Nebraska;

(9) That the admission of a State on an equal footing with the original States involves the adoption, as citizens of the United States, of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new State with the assent of Congress;

(10) That the rule prescribed by § 4 of the act of April 14, 1802, 2 Stat. 155, c. 28, was to be a uniform rule, and there was no reason for limiting such a rule to the children of those who had been already naturalized, but, on the contrary, the intention was that the act of 1802 should have a prospective operation. *Boyd* v. *Thayer*, 135.

NEBRASKA.

See RIPARIAN OWNER.

NEW TRIAL.

If the whole evidence introduced by the defendant upon one issue is incompetent to support it, and is admitted and considered against the plaintiff's exception, and the judge, by ruling that this evidence is decisive against the plaintiff's right to recover, without regard to another issue in the case, induces the plaintiff not to put in evidence on the other issue, the plaintiff is entitled to a new trial, although he has not also excepted to a direction to return a verdict for the defendant. *Michigan Insurance Bank* v. *Eldred*, 293.

PATENT FOR INVENTION.

1. The invention secured to Joseph F. Gidden by letters patent No. 157,124, dated November 24, 1874, for an improvement in wire fences, involved invention, and the patent therefor is valid. *Barbed Wire Patent*, 275.

2. Courts incline to sustain a patent to the man who takes the final step in the invention which turns failure into success. *Ib.*
3. When an unpatented device, the existence and use of which are proven only by oral testimony, is set up as a complete anticipation of a patent, the proof sustaining it must be clear, satisfactory, and beyond a reasonable doubt. *Ib.*
4. Letters patent No. 228,186, issued June 1, 1880, to Maurice Gandy, for an improved belt or band for driving machinery and an improved mechanical process for manufacturing the same, are valid, and the novelty and utility of the invention protected by it are not disturbed by the evidence in this case. *Gandy* v. *Main Belting Co.*, 587.
5. The "public use or sale" of an invention "for more than two years prior to" the "application" for a patent for it, contemplated by section 4886 of the Revised Statutes as a reason for not issuing the patent or for its invalidation if issued, must be limited to a use or sale in this country. *Ib.*

POST OFFICE DEPARTMENT.

See CONSTITUTIONAL LAW, A, 1;
MAILS, TRANSPORTATION OF.

PLACE OF TRIAL.

See CRIMINAL LAW, 1.

PLEADING.

See LOCAL LAW;
NATURALIZATION.

PRACTICE.

As the judgment in this case rests upon a sound principle of law this court affirms it, although it was put by the court below upon an unsound principle. *Sullivan* v. *Iron Silver Mining Co.*, 431.

See CHARGE TO JURY;
EXCEPTION;
NEW TRIAL.

PRINCIPAL AND SURETY.

See MORTGAGE.

PROHIBITION, WRIT OF.

1. Prohibition will not go after judgment and sentence, unless want of jurisdiction appears on the face of the proceedings; but, before judgment, the Superior Court can examine not simply the process and pleadings technically of record, but also the facts and evidence upon which action was taken. *In re Cooper*, 472.

2. On an application for a writ of prohibition, the inquiry being confined to the matter of jurisdiction, only the record proper should be looked into, and not documents and other evidence in addition to the record which may be sent up under the provisions of Rev. Stat. § 698. *Ib.*
3. When a party aggrieved by a judgment has an appeal to this court which becomes inefficacious through his neglect, a writ of prohibition to prevent the enforcement of the judgment will not issue from this court. *Ib.*

See BEHRING SEA.

PUBLIC LAND.

1. The grant of public land to the State of Iowa by the act of May 15, 1856, 11 Stat. 9, c. 28, "in alternate sections to aid in the construction of certain railroads in that State" was a grant *in præsenti*, which did not attach until the time of the filing of the map of definite location, although the beneficiary company (under the Iowa statute) may have surveyed and staked out upon the ground a line of its own road. *Sioux City & Iowa Falls Land Co.* v. *Griffey*, 32.
2. The plaintiff, claiming under the said grant to the State of Iowa, brought an action against the defendant to recover a tract, a part of the grant. The defendant claimed under a patent from the United States subsequent to the filing of the map of definite location, but issued on a preëmption claim made prior thereto, and filed a cross-bill for quieting his title. *Held*, that it was not open to the plaintiff to contest the *bona fides* of the preëmption settlement. *Ib.*
3. A grant to a railroad company of public lands, within defined limits, not sold, reserved or otherwise disposed of when the route of the road becomes definitely fixed, conveys no title to any particular land until the location, and until the specific parcels have been selected by the grantee and approved by the Secretary of the Interior. *New Orleans Pacific Railway Co.* v. *Parker*, 42.

See MINERAL LAND.

RAILROAD.

1. A mortgage by a railroad company of its railroad, rights of way, roadbed and all its real estate then owned or which might be thereafter acquired appurtenant to or necessary for the operation of the railroad, and all other property wherever situated in the State, then owned or which might thereafter be acquired by the company, and which should be appurtenant to or necessary or used for the operation of its road, and also the tenements, hereditaments and appurtenances thereunto belonging, does not cover a grant of lands within the State subsequently made by Congress to the company in aid of the construction of its road. *New Orleans Pacific Railway Co.* v. *Parker*, 42.
2. If a holder of one or more of a series of bonds issued by a railroad com-

pany and secured by a mortgage in terms like this mortgage has a right to institute proceedings for the foreclosure of the mortgage, (about which no opinion is expressed,) he is bound to act for all standing in a similar position, and not only to permit other bondholders to intervene, but to see that their rights are protected in the final decree. *Ib.*

The Chicago, Rock Island and Colorado Railway Company contracted with the Denver and Rio Grande Railroad Company for the use by the former of the tracks, stations, sidings, switches, etc. of the latter company between Colorado Springs and Denver, (except its shops at Burnham,) and also for its terminal facilities at Denver, and, having so contracted made its connections and entered on the enjoyment of its rights under the contract. Shortly afterwards the Chicago, Rock Island and Pacific Railway Company was organized and acquired the property and rights of the Chicago, Rock Island and Colorado Railway and entered into the enjoyment of them, and its rights were recognized by the Denver and Rio Grande Railroad Company. The Rock Island and Pacific Company then acquired a right to connect with the Union Pacific Railroad Company at Limon, and to run its Eastern trains over the tracks of the latter company to Denver, which it did. The distance from Limon to Denver by this route was sixty-four miles less than by the way of Colorado Springs and the Denver and Rio Grande road. Although it had diverted its Denver traffic it continued to use the Rio Grande road for its Pueblo traffic, and it claimed the use of the terminal facilities of that road at Denver for all, and also of some land at Burnham not actually used for shops. It also claimed the right under the contract to put in its own switching forces and cleaning gangs. The Denver and Rio Grande Company then gave notice that it would exclude from the Denver terminals all business coming over the Union Pacific tracks. Thereupon the Rock Island Company filed a bill in equity and obtained a restraining order. By amendments and supplemental bills there were brought into the controversy other matters of difference between the two companies and a final decree was made settling their rights under the contract as follows: (1), that the new Rock Island Company was the successor of the old, and had the right under the contract to operate its trains over the Rio Grande Company's line; (2), that it had not the right, under the contract, to bring its trains to the Denver terminals over the Union Pacific; (3), that it had the right to employ separate switching crews and separate employés to perform other services in the yards of the Rio Grande Company under the control and subject to the direction of the agent of that company; (4), that the words "shops at Burnham" in the contract included all lands used or procured for shop purposes and appurtenant to the shops located at Burnham; (5), that a track should be set apart at Denver on which the Kansas Pacific Company might clean its cars; (6), that each party should pay one-half of all

costs. On appeal this court *Held*, (1) That the plaintiff was entitled to file this bill; (2) That it was never intended to grant the use of terminal facilities for the Rock Island Road, except as appurtenant to the use by it of the Rio Grande road; (3) That the exception of the shops at Burnham not only included the buildings actually used for mechanical purposes, but also two tracts purchased for the use of the shops, and intended to be devoted to such purposes; (4) That there was no error in the decree of the court below as to the employment of separate switching crews; (5) That the cleaning of the cars could be done by the Rock Island Company, but the Rio Grande Company was bound to furnish track facilities for it; (6) That it was not necessary to decide questions raised as to the discharge of employés engaged in the operation of that part of the road jointly occupied and used under the contract. *Chicago, Rock Island & Pacific Railway* v. *Denver & Rio Grande Railroad.*

See COMMON CARRIER;
CONSTITUTIONAL LAW, A, 2, 6, 7;
EVIDENCE, 3;
PUBLIC LAND, 3.

REBELLION.

1. During the civil war two citizens of the United States, residing in loyal States, could make a valid contract for the sale or mortgage of cotton growing on a plantation within one of the insurgent States, and such a contract would pass existing cotton on the plantation, and also crops to be subsequently raised thereon. *Briggs* v. *United States*, 346.
2. The contract in this case for the sale of cotton growing and to be grown did not come within the statute of frauds, and the only question to be decided is whether it was a contract of sale or a contract of mortgage. *Ib.*
3. The captured and abandoned property act was a surrender by the United States of its rights as a belligerent to appropriate property of a particular kind taken in the enemy's country, and belonging to a loyal citizen. *Ib.*

RIPARIAN OWNER.

1. When grants of land border on running water, and the banks are changed by the gradual process known as accretion, the riparian owner's boundary line still remains the stream; but when the boundary stream suddenly abandons its old bed and seeks a new course by the process known as avulsion, the boundary remains as it was, in the centre of the old channel: and this rule applies to a State when a river forms one of its boundary lines. *Nebraska* v. *Iowa*, 359.
2. The law of accretion controls on the Missouri River, as elsewhere; but the change in the course of that river in 1877 between Omaha and

Council Bluffs does not come within the law of accretion, but within that of avulsion. *Ib.*

SALARY.

See NATIONAL BOARD OF HEALTH.

SALE.

In Kentucky the common law rule prevails that a sale of personal property is complete, and title passes as between vendor and vendee, when the terms of transfer are agreed upon, without actual delivery. *Briggs* v. *United States*, 346.

SETTLEMENT.

See EVIDENCE, 4.

STATUTE.

A. GENERALLY.

See CONSTITUTIONAL LAW, A, 14, 15.

B. CONSTRUCTION OF STATUTES.

1. *United States* v. *Tynen*, 11 Wall. 8, quoted and applied to the points: (1) that when there are two acts on the same subject effect is to be given to both, if possible; (2) that when two acts on the same subject are repugnant, the later operates to repeal the earlier to the extent of the repugnancy; and (3) that a later act, covering the whole subject of an earlier one, and embracing new provisions, showing that it was intended as a substitute for the earlier act, operates as a repeal of that act. *District of Columbia* v. *Hutton*, 18.
2. When a later act operates as a repeal of an earlier act of Congress, a subsequent recognition of it by Congress as a subsisting act will not operate to prevent the repeal. *Ib.*
3. Courts should be careful not to declare legislative acts unconstitutional upon agreed and general statements, and without the fullest disclosure of all material facts. *Chicago & Grand Trunk Railway Co.* v. *Wellman*, 339.
4. Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part, relating to a distinct subject, may be invalid. *Field* v. *Clark*, 649.

C. STATUTES OF THE UNITED STATES.

See ALIEN IMMIGRANT;
CONSTITUTIONAL LAW, A, 1, 3, 17, 18;
CRIMINAL LAW, 1;
DISTRICT OF COLUMBIA, 1, 2;
EQUITY, 1;
JURISDICTION, B, 6; D, 1, 3, 4;
MINERAL LAND, 1;
NATIONAL BOARD OF HEALTH;
NATURALIZATION;
PATENT FOR INVENTION, 5;
PROHIBITION, WRIT OF, 2;
PUBLIC LAND, 1;
REBELLION, 3.

D. STATUTES OF THE STATES AND TERRITORIES.

Illinois. *See* CRIMINAL LAW, A, 4; JURISDICTION, C, 2.
Kentucky. *See* TAX AND TAXATION.
Louisiana. *See* CONSTITUTIONAL LAW, A, 2.
Michigan. *See* CONSTITUTIONAL LAW, A, 6.
New York. *See* CONSTITUTIONAL LAW, A, 4, 10, 11.
Wisconsin. *See* LOCAL LAW.

STATUTE OF FRAUDS.

See REBELLION, 2.

TAX AND TAXATION.

1. The immunity from taxation conferred upon the Louisville Water Company by the legislature of Kentucky by the act of April 22, 1882, 1 Sess. Acts, 1882, 915, was withdrawn by the general revenue act of May 17, 1886, Gen. Stats. 1888, c. 92. *Louisville Water Co.* v. *Clark*, 1.
2. The immunity from taxation granted to the company by the said act of 1882 was accompanied by the condition expressed in the act of February 14, 1856, 2 Rev. Stats. Ky. 121, and made part of every subsequent statute, when not otherwise expressly declared, that by amendment or repeal of the former act such immunity could be withdrawn. *Ib.*
3. The withdrawal of the exemption from taxation conferred upon the company by the act of 1882 put an end to the obligation imposed upon the company by that act, to furnish water free of charge to the city for the extinguishment of fires, cleansing of streets, etc. *Ib.*
4. The acquisition by the sinking fund of the city of the stock of the water company, whether before or after the passage of the act of 1882, was subject to the reserved power of the legislature, at its will to withdraw the exemption from taxation, by amending or repealing that act. *Ib.*

See CONSTITUTIONAL LAW, A, 2.

TRUST.

1. A purchase by a trustee of trust property, for his own benefit, is not absolutely void, but voidable; and it may be confirmed by the parties interested, either directly, or by long acquiescence, or by the absence of an election to avoid the conveyance within a reasonable time after the facts come to the knowledge of the *cestui que trust*. *Hammond* v. *Hopkins*, 224.
2. Two partners owned real estate in common, some of which was used in the partnership business. One died making the other by his will a trustee for the testator's children, with power of sale of all the real estate, and directing that the business be carried on. After carrying on the business for some time the trustee sold the real estate, by auction, and bought portions of it in through a third person, and ac-

counted for the half of the net proceeds. This transaction was open and was known to all the *cestui que trustent* and was objected to by none of them. *Held*, that there was nothing in all this to indicate fraud. *Ib.*

3. While it is true that a trustee cannot legally purchase on his own account that which his duty requires him to sell on account of his *cestui que trust*, nor purchase on account of the *cestui que trust* that which he sells on his own account, and that the *cestui que trust* may avoid such a sale even though made without fraud, and without injury to his interests, yet it is also true that such a transaction is not absolutely void in the sense that the purchaser takes no title, and that it may be ratified and affirmed by the *cestui que trust*, either directly or by acquiescence and silent approval; and, in such case, when he has ample notice of the facts, and waits before taking action to set the sale aside until he can see whether the transaction is like to prove a profitable speculation, he is guilty of laches, which amount to a ratification and approval. *Hoyt* v. *Latham*, 553.

VENDOR AND VENDEE.

See SALE.

VERDICT.

See JURISDICTION, B, 2.

WILL.

A testator after giving the bulk of his property to his six brothers and sisters in equal shares, directed that "any and all notes, bills, accounts, agreements, or other evidences of indebtedness against any of my said brothers and sisters, held by me at the time of my decease, be cancelled by my said executors and delivered up to the maker or makers thereof, without payment of the same or any part thereof," except two notes specified and secured by mortgage. *Held*, that this direction did not include joint and several notes made to the testator between the date of the will and his death, by a partnership of which a brother was a member, to obtain money to carry on the business of the partnership, and secured by a conveyance of valuable property. *Waterman* v. *Alden*, 196.

See EVIDENCE, 4.

WRIT OF PROHIBITION.

See PROHIBITION, WRIT OF.